

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 6:14-cv-1330-AA

Plaintiff,

ORDER

v.

MALCOLM H. CLEMENT, JR, et al.,

Defendants.

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AIKEN, Chief Judge:

The United States of America (the government) moves to realign the parties in this action and to dismiss the petition filed by Malcolm H. Clement, Jr. (Clement). The motions are granted.

In 2012, the government filed suit to reduce to judgment certain tax liabilities of Clement and to foreclose certain federal tax liens on parcels of property located in Douglas County, Oregon. See United States v. Clement, Civ. No. 6:12-cv-1902-AA. Clement "rejected" the jurisdiction of this court and failed to respond to the complaint or respond to discovery requests. The court denied Clement's jurisdictional challenge, explaining that Clement's

contentions misconstrued the law and had been rejected repeatedly by numerous courts, including the Ninth Circuit, as "frivolous" challenges to federal income tax laws. United States v. Clement, Civ. No. 6:12-cv-1902-AA, doc. 28 (Opinion and Order filed Feb. 6, 2013); United States v. Studley, 783 F.2d 934, 937 (9th Cir. 1986); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981).

After Clement failed to comply with the court's orders to file an answer and respond to the government's discovery requests, the court entered default and default judgment against him. Subsequently, the court granted the government's Motion for Sale, authorizing the sale of the real property encumbered by federal tax liens. As with every order issued by this court, Clement filed a "rejection" in response to the court's orders and the government's filings. See United States v. Clement, Civ. No. 12-9102-AA (docs. 30, 31, 39, 46, 49-51, 57, 60-61, 66, 69, 74, 76, 78, 80, 83, 90, 93, 102, 106).

Clement also filed a petition in state court, seeking injunctive relief preventing the sale of the real property and an order "terminating" the government's cause of action against Clement. The government properly removed the action to federal court, given that Clement's petition sought relief against the United States and involves federal tax liabilities. 28 U.S.C. §§ 1331, 1346. The government now moves to realign the parties and to dismiss this action.

The government is properly realigned as the defendant and Clement as the plaintiff, because Clement seeks to enjoin the government from completing the sale of property encumbered by federal tax liens. Further, dismissal is appropriate, because Clement's petition is nothing more than an improper appeal of the default judgment and orders authorizing the sale of property in Case No. 12-cv-1902-AA. Clement could have appealed the court's orders to the United States Court of Appeals for the Ninth Circuit, and he chose not to do so. Regardless, Clement's arguments in this petition are the same as those he presented previously, and they have been rejected. Therefore, he is barred from raising them again, regardless of the court in which he filed them. ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund, 754 F.3d 754, 760 (9th Cir. 2014) (issue preclusion bars "successive litigation of an issue of fact or law actually litigated and resolved").

Accordingly, the government's Motion to Realign Parties (doc. 3) and Motion to Dismiss (doc. 4) are GRANTED. This action is HEREBY DISMISSED.

IT IS SO ORDERED.

Dated this 3<sup>RD</sup> day of December, 2014.



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Ann Aiken  
United States District Judge